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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,980

08/15/2006

Jorn Borgert

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8813

24737

7590

12/23/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

GUPTA, VANI

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

12/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,980	<b>Applicant(s)</b> BORGERT ET AL.	
	<b>Examiner</b> VANI GUPTA	<b>Art Unit</b> 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 18, 2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code 103(a) not included in this action can be found in a prior Office action.

**1. *Claims 1 - 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melkent et al. (US Patent No. 6,725,080 B2) in view of Gordon (US Patent No. 5,938,645).***

***Regarding claims 1 – 3, Melkent et al. (Melkent)*** discloses an apparatus “for facilitating the combined (in other words, simultaneous) positioning and orientation of multiple surgical implements” (*Abstract*). That is, there are multiple objects that are tracked by the tracking system, and each object comprises tracking markers for the tracking system to track (col. 5, line 41). Melkent also explains that the position and orientation of a particular part of the object may be determined (*col. 10, ll. 55 – 60*).

Melkent differs from claims 1 – 3 in that Melkent does not disclose specifically that the multiple objects being tracked by the tracking system are a first catheter element and a second catheter element.

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Nonetheless, *Gordon* describes a first catheter element comprising a catheter, and a second catheter element comprising a guide wire, wherein the catheter can be slipped over the guide wire and follow the guide wire through the bends of a blood vessel (*col. 2, ll. 50 – 63*).

It would be prima facie obvious to modify Melkent with *Gordon* so that one could properly position the two catheter elements with respect to each other in small tortuous places such as blood vessels.

***Regarding Claim 4***, Melkent suggests that at least one of the localizers is capable of being a magnetic field sensor in an external magnetic field for determining the spatial position (*col. 5, ll. 41 - 46*).

***Regarding Claim 5***, Melkent suggests that at least one of the localizers contains a source for electromagnetic or acoustic radiation (*col. 5, line 41 – 55*).

***Regarding claims 6 and 11***, Examiner interprets “wherein the localizers are arranged at a distance of less than 10 cm from each other during use of the catheter system” to mean that when the catheter is slipped over the guide wire, the two catheter elements are situated in close proximity to each other. *Gordon* explains a control mechanism that controls the positioning of the two elements (less than 10 inches) relative to each other (*Gordon: col. 6, ll. 39 - 45*). It would be prima facie obvious to modify Melkent in view of *Gordon* to also arrange the localizers at a distance of less than 5 cm from each other during use of the catheter system to provide a tighter control over the positioning of the catheter elements with respect to each other.

***Regarding claims 7 and 8***, Melkent in view of *Gordon* suggests a method for navigation of a catheter system in a vascular system, wherein the catheter system contains a first and a second catheter element, which are coupled to each other such that they can slide with respect to

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each other and carry at least a first or second active localizer respectively (*see rejection of claims 1 - 3*).

Melkent in view of Gordon also teaches determining a spatial position of the first active localizer relative to the vascular system (*Gordon: col. 8, ll. 44 - 45*); and determining a spatial position of the second active localizer relative to the spatial position of the first active localizer, wherein the determining steps are performed substantially simultaneously (*Melkent: col. 7, ll. 15 - 21 and ll. 60 - 64*).

**Regarding claim 9**, Melkent in view of Gordon suggests the spatial position of the first active localizer relative to the vascular system is determined based on an image of the vascular system (*Melkent: col. 8, ll. 19 - 42*).

### ***Response to Arguments***

Applicant's arguments, filed November 18, 2009, with respect to the rejection(s) of claim(s) 1 - 9 and 11 under Twiss et al. (US Patent No. 5,375,596) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Melkent et al. (US Patent No. 6,725,080 B2) and Gordon (US Patent No. 5,938,645). Please see above for more details.

### ***Conclusion and Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VANI GUPTA whose telephone number is (571)270-5042. The examiner can normally be reached on Monday - Friday (8:30 am - 5:30 pm; EST).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. G./

Examiner, Art Unit 3768

/Long V Le/

Supervisory Patent Examiner, Art Unit 3768